

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MICHAEL B. BAILEY,)
)
Plaintiff,)
)
VS.) No. 16-2577-JDT-dkv
)
ASHLEY DOYLE, ET AL.,)
)
Defendants.)

**ORDER DIRECTING PLAINTIFF TO COMPLY WITH 28 U.S.C. § 1915(a)(2)
OR PAY THE \$400 CIVIL FILING FEE**

On July 13, 2016, Plaintiff Michael B. Bailey, who is incarcerated at the Morgan County Correctional Complex in Wartburg, Tennessee, filed a civil complaint accompanied by a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.)

Under the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. §§ 1915(a)-(b), a prisoner bringing a civil action must pay the filing fee required by 28 U.S.C. § 1914(a). Although the obligation to pay the fee accrues at the moment the case is filed, *see McGore v. Wrigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997), partially overruled on other grounds by *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013), the PLRA provides the prisoner the opportunity to make a “down payment” of a partial filing fee and pay the remainder in installments. § 1915(b)(2). However, in order to take advantage of the installment procedures, the prisoner must properly complete and submit to the district court, along with

the complaint, an *in forma pauperis* affidavit containing a current certification by the prison trust account officer and a copy of his trust account statement for the six months immediately preceding the filing of the complaint. § 1915(a)(2).

In this case, the trust account statement submitted with Plaintiff's affidavit is outdated, covering the period from July 2015 to December 2015, more than six months before this case was filed. (ECF No. 2 at 5.) The certification by the trust account officer, dated December 29, 2015, also is not current. (*Id.* at 3.) Therefore, Plaintiff has failed to properly comply with § 1915(a)(2). Accordingly, Plaintiff is ORDERED to submit, within 30 days after the date of this order, either the entire \$400 civil filing fee¹ or a certified copy of his trust account statement for the last six months. If Plaintiff needs additional time to file the required document, he may request one 30-day extension of time from this Court. *McGore*, 114 F.3d at 605.

If Plaintiff timely submits the necessary document and the Court finds that he is indeed indigent, the Court will grant leave to proceed *in forma pauperis* and assess a filing fee of \$350 in accordance with the installment procedures of 28 U.S.C. § 1915(b). However, if Plaintiff fails to comply with this order in a timely manner, the Court will deny leave to proceed *in forma pauperis*, assess the entire \$400 filing fee without regard to the installment

¹ Twenty-eight U.S.C. § 1914(a) requires a civil filing fee of \$350. In addition, § 1914(b) requires the clerk to “collect from the parties such additional fees . . . as are prescribed by the Judicial Conference of the United States.” The Judicial Conference has prescribed an additional administrative fee of \$50 for filing any civil case, except for cases seeking habeas corpus and cases in which the plaintiff is granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. Therefore, if Plaintiff is ultimately granted leave to proceed *in forma pauperis* in accordance with the PLRA, he will not be responsible for the additional \$50 fee.

payment procedures, and dismiss the action without further notice pursuant to Federal Rule of Civil Procedure 41(b), for failure to prosecute. *McGore*, 114 F.3d at 605.²

IT IS SO ORDERED.

s/ James D. Todd

JAMES D. TODD
UNITED STATES DISTRICT JUDGE

² Even a voluntary dismissal by Plaintiff will not eliminate the obligation to pay the filing fee. *McGore*, 114 F.3d at 607; *see also In re Alea*, 286 F.3d 378, 381 (6th Cir. 2002).